

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 8539 OF 2006

The Deputy Engineer, MIDC & ors.... Petitioner
versus

Bharat Mohanlal Suchak Respondent.

Shri Prashant Chavan with Rajmani Varma i/b.Navdeep
Vora & Associates for the petitioner
Shri U.A.Marathe with Sudam Ambre for respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 20TH APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. This petition is filed by Maharashtra Industrial Development Corporation taking exception to an interlocutory order passed by the trial court dated 20-7-2006 which in turn goes to reject the application moved by the petitioner/original defendant before the trial court to set aside the order directing the suit to proceed without written statement.

3. The respondent is an industrial establishment located in MIDC area who filed a civil suit before the trial court for declaration and perpetual injunction

seeking to restrain the present petitioners from recovering drainage charges from the industry. The suit was filed on 22-8-2005 and the petitioners who are defendant before the trial court sought few adjournments for filing of written statement. On failure of the petitioners to file written statement in time the trial court passed an order that the suit should proceed ex-parte without written statements of the defendants. The said order is dated 28-7-2006.

4. Thereafter the petitioners moved an application for setting aside the order passed by the trial court below Exh.I directing to proceed the suit exparte without written statement. The said application was accompanied by the written statement. The application was moved on 21-4-2006. The reason spelt out in the said application was to the effect that the relevant record was misplaced and not traceable in the local office of the defendant Corporation and on account of which the defendants were unable to instruct their advocate. It was also contended that the defendant is a Corporation, a statutory body which is under obligation to perform public duties and hence it was stated that the order directing the suit to proceed exparte without written statement be quashed. The present respondent/original plaintiff gave its say on

the said application on 7-6-2006 by categorically stating that as the application has been filed eight months after filing of the suit, the court may allow the application subject to heavy costs being imposed on the defendants. Barring making a claim for heavy costs, the application for setting aside the order was not seriously opposed. However, the trial court proceeded to pass order on 20-7-2006 which is impugned in this writ petition wherein it is observed that the suit summons was serviced on 22-8-2005 there was an obligation to file written statement within 90 days i.e. before 22-11-2006. It is thus recorded that the written statement has been filed on record on 21-4-2006 i.e. after five months, and hence the court proceeded to reject the application finding that the justification for belated filing of the written statement was not acceptable.

5. What is to be seen is that the main prayer in the suit is questioning the authority of the present petitioner to recover drainage charges which were earlier paid by the respondent. It is the case of the petitioner that the drainage system is put in place by MIDC and towards the costs and maintenance charges thereof money is recovered by turning it as drainage charges. The claim made by the petitioner against the respondent for recovery of drainage charges is said to

be exceeding Rs. 15 lacs. The petitioner submits that the drainage charges is a recurring liability so far as the industries are concerned, and an exparte judgment and decree against the petitioner would cause irreparable loss to the petitioner as the petitioner would be restrained from recovering drainage charges not only for the past period but also in future. Per contra the learned counsel for the respondent has submitted that there is no valid justification for belated filing of the written statement and thus tries to justify the order passed by the trial court. In the alternative it is submitted that heavy costs be saddled if the petition is to be allowed.

6. Having regard to the totality of the facts and circumstances, I am of the clear view that ends of justice would advance by accepting the written statement filed by the present petitioner in trial court and by securing the decision on merit of the matter by permitting the parties to contest the issue. To put it otherwise miscarriage of justice would occur if the impugned order passed by the trial court is not quashed and set aside. The suit is filed on 18-8-2005 summons is served on 22-8-2005. Ordinarily written statement ought to have been filed within 90 days i.e. before 22-11-2005. The written statement has been tendered on 21-4-2006. Thus there was a delay of

about 5 months in filing the written statement.

7. The learned counsel for the respondent has also pointed out that even in filing the present petition, no promptness has been shown by the petitioner in as much as though the impugned order is passed on 20-7-2006, the petition has been filed on 21-11-2006. Here again it is demonstrated that about four months time is consumed for filing of the petition. The main grievance of the respondent is that unnecessary delay is caused in decision of the suit on account of want of diligence on the part of the petitioner. In this factual position, one thing is clear that the petitioner has not shown due diligence and promptitude in either filing written statement and filing present petition and hence the respondent need to be adequately compensated, though I am inclined to allow the writ petition and quash the impugned order. I propose to do the same subject to payment of cost. Hence the following order.

i) Writ petition is allowed. Impugned order passed by the trial court dated 28-7-2006 is quashed and set aside. The order passed at Exh.I by the trial court directing the suit to proceed exparte without written statement is also quashed and set aside. The written statement tendered by the petitioner on record on

21-4-2006 is accepted and shall be considered in the proceedings of the suit. This order is subject to payment of costs of Rs. 20,000/- to be paid by the petitioner within eight weeks. Rule made absolute in the above terms.

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